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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of JEFFREY S.
LINDLEY and LAURIE A. EAST.

JEFFREY S. LINDLEY,

Respondent,

v.

LAURIE A. EAST,

Appellant.

E052285

(Super.Ct.No. VFLVS032330)

OPINION

APPEAL from the Superior Court of San Bernardino County. Robert Lemkau,
Judge. Affirmed.

Laurie A. East, in pro. per., for Appellant.

No appearance for Respondent.

On April 9, 2010, appellant Laurie A. East (wife) filed an Order to Show Cause
(OSC) seeking spousal support arrears, recompense for household bills, medical
expenses, and credit card balances all arising out of her marriage settlement agreement

(MSA) with respondent Jeffrey S. Lindley (husband). On September 13, 2010, the family court awarded wife \$12,574.19 in spousal support arrears including interest, \$6,727.69 for household and medical expenses including interest, and \$6,794.66 for credit card bills for a total judgment of \$26,096.54 payable by husband in monthly installments of \$217.47.

Wife filed two motions for reconsideration, both of which were denied. On appeal, wife contends the family court erred by permitting husband to file a late response to her OSC and in calculating the total amount of spousal support arrearages due. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On August 1, 2006, husband and wife stipulated for judgment entered pursuant to a martial settlement agreement (MSA), which provided: “Child support is hereby set at \$382 per month due from [wife] to [husband]. However, due to offset from spousal support, [wife] does not pay [husband], pursuant to Attachment A-Xspouse which is incorporated herein by reference.”¹ The stipulation further provided that “[husband] shall pay 100% . . . of any unreimbursed medical, dental, and orthodontia expense incurred on behalf of the minor child/ren.”

¹ The parties filed an amended judgment of dissolution of marriage on December 4, 2008, which changed some of the language of the agreement, but did not affect its substance. At the hearing on September 13, 2010, the parties stipulated the judgment dated December 4, 2008, was a MSA.

Additionally, the agreement reflected, “The . . . Husband is ordered to pay . . . Wife for her support the sum of \$444.00 per month for spousal support . . . commencing August 1, 2006 and continuing until August 30, 2009, pursuant to Xspouse attachment A.” Finally, as pertinent here, it required that “After August 30, 2006, Spousal Support shall terminate & the Court will have no jurisdiction over that issue. Wife, past Aug. 30, 2009, knowingly and intelligently waives spousal support.” The attached “Xspouse” exhibit reflects the following three circled numbers under the designation “Support” with corresponding “explanations”: “GuideIn CS -382, Alameda SS 826, Total 444.”²

On April 9, 2010, wife filed an OSC requesting spousal support arrears for the years 2006 through 2009. She itemized the amounts of monthly spousal support payments in arrears requesting \$444 for the months of August 2006 through January of 2007, \$586 for the months of February 2007 through February 2009, and \$826 for the months of March through August 2009. Subtracting amounts paid by husband, wife requested a total award of \$17,697.08 in spousal support arrears. She additionally requested an award of \$12,767.38 for household bills, credit cards, and medical expenses.

At a hearing on April 14, 2010, husband’s counsel requested to be relieved. On June 1, 2010, at the hearing scheduled for the OSC, attorney Catherine Denevi served

² The “Xspouse” exhibit is not attached to either of the amended stipulated judgments filed July 25, 2007, or December 4, 2008.

wife with a substitution of attorney reflecting her representation of husband.³ Husband had yet to file opposition papers.

The court permitted both parties several opportunities to argue their respective positions before concluding “I think we have a conflict in terms of what the orders are and . . . I think I’m going to need further information because your judgment wasn’t very well . . . [¶] . . . [¶] [w]ritten, unfortunately.” “I think this needs to be looked at with points and authorities for both sides to put out their position to say exactly why they think what they think so that the conflict can be resolved once and for all.” Thus, the court set the matter for a contested short cause trial on September 13, 2010.

Wife filed her trial brief on August 16, 2010. On September 13, 2010, husband apparently submitted his brief on the date set for trial.⁴ Wife objected to the filing of husband’s trial brief. Both husband’s counsel and the court clerk noted the family court’s last order provided that husband’s response need not be filed until that day.⁵

³ The substitution was not filed until June 3, 2010.

⁴ The reporter’s transcript reflects husband’s counsel served the brief on wife at the hearing.

⁵ Wife has failed to include in the record either the minute order of the June 1, 2010, hearing which apparently reflects when husband’s trial brief was due, or husband’s trial brief itself, which was apparently filed on September 13, 2010. The register of actions indicates husband’s trial brief was to be filed by the date of the next hearing, on September 13, 2010. Normally, an appellant forfeits any challenge to an order when she fails to provide an adequate record to review that order. (*Hotels Nevada v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.)

The family court found husband was required to pay wife \$444 a month for the duration of the agreement, i.e., from August 2006 through August 2009. It awarded wife that aggregate amount of back payments minus payments already made plus 10 percent interest for a total spousal support award of \$12,574.19. The court additionally awarded the entirety of wife's requests for household bills, medical expenses, and credit card balances; respectively, \$932.81, \$6,727.69, and \$6,794.66 for a total award of \$26,096.54. The court found husband was unemployed and ordered monthly payments in the amount of \$217.47 due on the 15th of each month.

DISCUSSION

A. HUSBAND'S DEFAULT

Wife contends husband defaulted by failing to timely respond to her OSC for spousal support arrears such that the court was without power to file his trial brief, should have prohibited his appearance at trial on the OSC, and should have simply entered an award in the amount requested by wife.⁶ We disagree.

“All responsive papers must be served no later than *nine court days* before the hearing” (Hogoboom & King, Cal. Prac. Guide: Family Law (The Rutter Group 2012) § 5.386.) However, “No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate.” (Cal. Rules of Court, rule 3.1300(d).)

⁶ To the extent wife contends the family court erred in initially continuing the matter to permit briefing of the issue, we find she forfeited the issue on appeal by failing to object below. (See *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 494, fn. 15; *In re Marriage of Lionberger* (1979) 97 Cal.App.3d 56, 61.)

“Tardy responsive papers will be ‘filed’; but the court has discretion to *disregard them* in ruling on the motion or OSC.” (Hogoboom & King, at § 5.386.) The family law court is vested with discretion to receive evidence and, where necessary, take a matter off calendar and continue it. (See *Lammers v. Superior Court* (2000) 83 Cal.App.4th 1309, 1327.) We review the family court’s discretionary authority for abuse of discretion. (See *In re Marriage of Falcone and Fycke* (2012) 203 Cal.App.4th 964, 995.)

Here, the register of actions for the June 1, 2010, hearing read: “The court orders [husband] to file a response to the OSC by [the] next hearing date of 9/13/10.”⁷ Both the reporter’s transcript and wife’s later-filed OSC establish husband filed his trial brief on September 13, 2010. Thus, husband’s brief was not untimely filed.

Second, even if it was untimely filed, wife cites no authority for the contention that failure to file a response to an OSC results in an entry of default in favor of the moving party. Rather, as noted *ante*, the family law court is required to file untimely responses and has broad discretion in determining whether to consider them. Here, to the extent husband’s brief was late, the court was required by law to file it. Of course, without the brief itself we cannot determine to what extent the court actually relied on it. Finally, wife does not appear to have been prejudiced by its filing. The family court’s

⁷ The reporter’s transcript of the June 1, 2010, hearing is ambiguous as to the date husband’s trial brief was due. The court initially stated wife’s brief should be filed 10 days prior to the next hearing, September 13, 2010, with husband’s brief due by the date of that hearing. The court later asks husband to file his response to wife’s brief “in the next 30 days,” though it is difficult to say how husband could file his response by July 1, 2010, to wife’s brief that was not due until September 3, 2010, and was not actually filed until August 16, 2010.

decision appears to be based largely, if not exclusively, on its consideration of the stipulated judgment and wife's brief. Thus, even if it had refused to file or consider husband's brief, it is clear the court would have rendered the same decision.

Wife relies on the decisions in *Hecq v. Conner* (1928) 203 Cal. 504, *Simonini v. Jay Dee Leather Products Co.* (1948) 85 Cal.App.2d 265, and *Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29, for her contention that husband's failure to timely file a response should have resulted in the entry of a default judgment in her favor. However, none of those decisions concern a family law court's consideration of an OSC for spousal support arrears. Instead, *Hecq* involved a motion to vacate a dismissal entered after the prosecuting party failed to show for trial. (*Hecq*, at pp. 508-509.) *Simonini* involved the dismissal of an action for failure to prosecute. (*Simonini*, at p. 268.) *Kapitanski* involved the trial court's entry of summary judgment in favor of the defendant after refusing to consider the plaintiff's declaration in opposition, which was filed one day late. The appellate court reversed the trial court's judgment. (*Kapitanski*, at pp. 31-33.) Thus, none of the cited decisions are at all relevant to the current circumstances and, at best, establish the trial court's discretionary authority to file and consider late filings. Moreover, as discussed above, husband's trial brief was not late.

B. SPOUSAL SUPPORT ARREARS

Wife's argument in her opening brief that the amount of spousal support arrears awarded by the family court was not representative of those required in the MSA is not at all clear. Thus, we rely largely on the more clearly articulated arguments made in her trial brief. We agree with the trial court the amounts of spousal support contemplated in

the MSA were not susceptible to increases as wife's "offset" child support payments were purportedly reduced upon the children's attainment of majority.

A MSA is a contract between the parties. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 398.) It is therefore subject to the general rules applicable to the construction of contracts. (*In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439.) "The basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. [Citations.] When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible. [Citation.] 'The words of a contract are to be understood in their ordinary and popular sense.' [Citations.]" (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955.)

Where the meaning cannot be determined from the words alone, parol evidence may be admitted if the language is ambiguous. "The test of whether parol evidence is admissible to construe an ambiguity is not whether the language appears to the court to be unambiguous, but whether the evidence presented is relevant to prove a meaning to which the language is 'reasonably susceptible.' [Citation.]" (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) "The decision whether to admit parol evidence involves a two-step process. First, the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible' to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably

susceptible’ to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step—interpreting the [document].” (*Ibid.*)

Normally, the interpretation of a document presents a question of law, which we review de novo. (*Brown v. Labow* (2007) 157 Cal.App.4th 795, 812.) “‘Where, however, extrinsic evidence is properly received, and such evidence is conflicting and conflicting inferences arise therefrom, the appellate court will accept or adhere to the interpretation adopted by the trial court provided that that interpretation is supported by substantial evidence.’ [Citations.]” (*Estate of Williams* (2007) 155 Cal.App.4th 197, 205-206.)

We agree with the court below that the MSA at issue here is a model of poor draftsmanship. The family court initially noted the provisions reading that (1) spousal support would terminate after August 30, 2006, (2) the court’s jurisdiction over spousal support would terminate after August 30, 2009, and (3) that mother waived spousal support, conflicted with another provision that required father to pay spousal support commencing on August 1, 2006, and continuing until August 30, 2009. Thus, it requested briefing on the matter.

The initial interpretation of the MSA by the subsequent family law court, and our own, suggests father would pay mother \$62 a month, representing the difference between the \$444 a month husband would pay wife for spousal support and the \$382 “offset” wife would pay to husband for child support. Only upon the presentation of evidence by both parties contradicting both the amount and the duration of the payments did the court render judgment. Thus, because conflicting extrinsic evidence was admitted and deemed

necessary in order to divine the meaning of the MSA, we shall review the family law court's order for substantial evidence.

Husband conceded below the \$444 monthly amount of spousal support he was obligated to pay according to the MSA already included a \$382 offset of the child support payments wife was required to pay him. Thus, husband conceded an obligation to pay arrears amounting to \$11,503.60; 36 monthly payments of \$444 minus the aggregate amount of payments both parties agreed he had already made. Husband maintained the inherent symbiosis of the agreement required both that he make spousal support payments in that amount for the entire duration of the MSA, August 1, 2006, through August 31, 2009, and that he receive the \$382 "offset" for that entire period. The agreement itself strongly reinforces this interpretation as it nowhere dictates the suspension of the "offset," refers to it in the singular, and in no way explains in what amounts and when the "offset[s]" would expire. Thus, the family court's order awarding \$11,431.08 in arrearages plus 10 percent interest for a total of \$12,574.19 was supported by substantial evidence.

Wife argued below the attached "Xspouse" exhibit reflected husband was obligated to pay \$826 per month in spousal support, which was "offset" by the \$382 she was required to pay him in child support; thus, husband was required to pay her \$444 per month *during the children's minority*. However, once the children attained majority, she argued her obligation to pay child support was reduced, thereby requiring husband to pay increased amounts of spousal support.

Wife cited Family Code section 3901, subdivision (a) for the proposition that the duty to pay child support continues only until the child's majority. Thus, wife maintained husband's "offset" was reduced by \$142 a month on July 1, 2007, when their daughter attained majority; therefore, increasing husband's monthly spousal support payments to \$586. Likewise, mother argued husband's "offset" was, once again, reduced by \$240 a month on March 1, 2009, when their son attained majority; thus, requiring husband pay her \$826 a month in spousal support from that day onward.

Wife's argument is hampered by the fact that the MSA makes no mention of the respective attainment of the parties' children's majority whatsoever. Nor does it reflect the "offset[s]" would ever be reduced. Moreover, it is impossible to determine from the MSA why mother's child support payments regarding the two children would differ. Moreover, wife herself testified she had never previously interpreted the agreement in such a manner until after she began researching how to obtain a judgment for husband's arrears.

Family Code section 3901, subdivision (b) provides that "Nothing in this section limits a parent's ability to agree to provide additional support or the court's power to inquire whether an agreement to provide additional support has been made." Thus, the court concluded that additional child support beyond the children's majority was contemplated by the MSA: "[T]he spousal support stipulated judgment says commencing August 1st, 200[6,] and continuing to August 30th, 2009, pursuant to Ex-Spouse attached. . . . [I]t would appear to the Court that . . . the agreement of the parties was [\$]444 per month for the entire duration." The court explicitly determined that the

MSA limited the applicability of Family Code section 3901, subdivision (a). The family court's award of spousal support arrears was supported by substantial evidence.

DISPOSITION

The judgment is affirmed. Each party is to bear their own costs on appeal.

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MILLER
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.